Supreme Court, U.S.
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No. 97-1479

In The

Supreme Court of the United States

October Term, 1997

CARLOS DIAZ, as Personal Representative of the Estate of LAZARO DIAZ on behalf of the Estate of LAZARO DIAZ and on behalf of JUAN DIAZ and YOLANDA DIAZ as survivors of LAZARO DIAZ,

Petitioner,

v.

CCHC-GOLDEN GLADES, LTD., a Limited Partnership with COMMONWEALTH CONTINENTAL HEALTH CARE, INC., General Partner d/b/a GOLDEN GLADES REGIONAL MEDICAL CENTER, LTD.,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida, Third District

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

DOES THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT, 42 U.S.C.A. § 1395dd, (EMTALA) INCORPORATE A STATE'S SPECIFIC LIMITATIONS FOR RECOVERY IN A WRONGFUL DEATH ACTION BASED UPON MEDICAL MALPRACTICE?

PARTIES TO THE PROCEEDING

The Petitioner, Carlos Diaz, as Personal Representative of the Estate of Lazaro Diaz, for and on behalf of the Estate of Lazaro Diaz and on behalf of Juan Diaz and Yolanda Diaz, was the Appellant in the District Court of Appeal of Florida, Third District, and was the Petitioner to the Florida Supreme Court on application for discretionary review.

The Respondents, CCHC-Golden Glades, Ltd., a Limited Partnership with Commonwealth Continental Health Care, Inc., General Partner, d/b/a Golden Glades Regional Medical Center, Ltd., were the Defendants in the trial court, the Appellees in the District Court of Appeal of Florida, Third District, and the Respondents in the Florida Supreme Court application for discretionary review. Commonwealth Continental Health Care, Inc.'s parent companies are OrNda Hospital Corporation, Tenet HealthSystem HealthCorp. and Tenet Healthcare Corporation.

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OPINIONS BELOW

The petition accurately reflects the opinions below. Copies to Opinions below are located in Appendix to Petitioner's Writ of Certiorari.

JURISDICTIONAL STATEMENT

The decision rendered by the District Court of Appeal of Florida, Third District, is not in conflict with any Federal Decisions and is in full compliance with the directives and legislative intent of EMTALA regarding the availability of damages under the Act. In the absence of any conflict between the lower court decision and any federal decisions, no controversy exists and this Court's discretionary review is not invoked.

STATUTORY PROVISIONS INVOLVED

The petition accurately delineates that this controversy involves the EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (EMTALA) 42 U.S.C.A. § 1395dd, specifically 42 U.S.C.A. § 1395 dd(d)(2)(A), and the FLORIDA WRONGFUL DEATH ACT, §§ 768.16-27, specifically § 768.21(8). This controversy also involves Florida's statutory definition of "Claim for Medical Malpractice" as set forth in FLORIDA STATUTE § 766.106(1)(a), which provides: " 'Claim for medical malpractice' means a claim arising out of the rendering of, or the failure to render, medical care or services."

STATEMENT OF THE CASE AND FACTS

Supplementation and clarification of Petitioner's Statement of the Case and Facts is necessary for this Court's full understanding of the facts and record on appeal. The Petitioner (Plaintiff in the underlying action) filed his Fourth Amended Complaint on July 7, 1994. (R. 124-137). The claims against Respondents (Defendants below) consisted of: Count I – Violation of 42 U.S.C. § 1395dd (R. 131); Count II – Claim based on F.S. § 393.13 (R. 133) THE BILL OF RIGHTS OF PERSONS WHO ARE DEVELOPMENTALLY DISABLED and Count III – Medical Malpractice (R. 135).

On July 25, 1994, Respondent filed a Motion to Dismiss the Fourth Amended Complaint based upon three grounds:

1. The allegation of a violation of 42 U.S.C. § 1395dd failed to state a cause of action as the allegations presented a traditional state medical malpractice claim.

2. The claim based on Florida Statute § 393.13 failed to state a cause of action, specifically, as no private right of action existed under "The Bill of Rights of Persons Who are Developmentally Disabled."

3. The medical malpractice claim failed to state a cause of action.

Respondents argued that the Florida Wrongful Death Act specifically excluded a parent from recovering damages for mental pain and suffering due to the loss of an

adult child in a claim for medical malpractice, thus Petitioner's claim on behalf of the parents should be stricken. (R. 140-143).

The Court granted the Motion to Dismiss as to the medical malpractice claim. (R. 170-177). Respondents filed an Answer and Affirmative Defenses to Counts I and II of the Petitioner's Fourth Amended Complaint, but Petitioner never refiled Count III, the claim based on medical malpractice. (R. 191-198). Subsequently, Respondents filed a Motion seeking partial summary judgment as to the damages sought in Counts I and II of the Fourth Amended Complaint, more specifically, the parents' claim of "mental pain and suffering as a result of the wrongful death of their adult child." (R. 222-230). Respondents maintained that these damages were specifically excluded by the FLORIDA WRONGFUL DEATH ACT. Respondent also maintained there was no cognizable cause of action for the parents under F.S. § 393.13 under THE BILL OF RIGHTS OF PERSONS WHO ARE DEVELOPMENTALLY DISABLED. In the alternative, Respondents requested that the parents' claims for their mental pain and suffering be stricken. (R. 863-874).

On October 10, 1995, Partial Summary Judgment was entered in favor of the Respondents on the parents' claims of mental pain and suffering as a result of the death of their adult child. (R. 905-906). On January 25, 1996, a Final Judgment was entered for Respondents. In that Order, the Court included the fact that the Estate had dropped all claims and noted that the parents had abandoned their claim for funeral expenses. In light of the previous partial summary judgment, the Court found that

the parents' EMTALA claim failed for want of compensable damages.

ARGUMENT IN OPPOSITION TO PETITION

The Petition for Writ of Certiorari contains numerous and redundant recitations regarding the purpose of EMTALA and the fact that this is not a Federal substitute or replacement for a State medical malpractice action. This is then followed by nebulous and sweeping statements that the Florida Court of Appeal misapplied Federal precedent and erroneously decided an important question of Federal law. However, the Petition neither cites how such error was committed nor indicates the specific manner in which the Court misapplied the requirements of EMTALA. Finally, Petitioners advised that the lower Court's decision "conflicts with the decisions rendered by several Federal appeals courts" without identifying the decisions purportedly in conflict.

I. The Lower Court Decision Is In Accordance With Federal Precedent

Contrary to Petitioner's view, the underlying decision is in accordance with numerous Federal decisions examining the relationship between state-imposed recovery limits and EMTALA. The lower court's opinion is specifically grounded upon *Power v. Arlington Hospital Association*, 42 F.3d 851 (4th Cir. 1994). After an exhaustive review of Virginia statute and case law, the Fourth Circuit reversed a lower court decision and found that an EMTALA claim was a medical malpractice claim under

the Virginia Medical Malpractice Act. That Act defined "malpractice" as "any tort based on health care or professional services rendered or which should have been rendered, by a health care provider to a patient." VA. CODE ANN. § 8.01-581.1 (Michie Supp. 1993). Therefore, the EMTALA claim "fit[s] within the rubric of coverage of the malpractice cap," and damages were limited to a $1 million maximum pursuant to VA. CODE ANN. § 8.01-581.15 (Michie 1992). *Id* at 861.

While *Power* is the most exhaustive decision examining the relationship of statutory recovery limits and EMTALA's incorporation clause, it doesn't stand alone. In a case of first impression, the Court in *Reid v. Indianapolis Osteopathic Medical Hospital, Inc.*, 709 F. Supp. 853 (S.D. Ind. 1989) applied Indiana's statutory limit of recovery to an EMTALA claim, as follows:

> . . . [I]t is entirely reasonable to read the language of § 1395dd(d)(3)(A) as incorporating state law caps on medical malpractice damages: the Federal statute states that individual plaintiffs can only "obtain those damages available for personal injury under the law of the state," and in those states (such as Indiana) with restricted medical malpractice statutes, the amount of damages that would be "available" for a personal injury claim against the health care provider would be *only* those damages available under that medical malpractice statute itself. Thus the court finds that, although § 1395dd(d)(3)(A) does not incorporate Indiana's procedural limitation on medical malpractice claims, it does incorporate the state's substantive limitation on the maximum amount

> recoverable for personal injury from a health care provider.

Id. at 855-856 (emphasis in original).

In *Lane v. Calhoun-Liberty County Hospital Association, Inc.*, 846 F. Supp. 1543 (N.D. Fla. 1994), the court commented on the recovery rights of a surviving parent pursuant to the FLORIDA WRONGFUL DEATH ACT when read in conjunction with an EMTALA claim.

> . . . [T]he Court concludes Florida law permits plaintiff to recover damages for her own pain and suffering resulting from her son's death. The Hospital argues the Florida Wrongful Death Act only permits plaintiff to recover damages if her son was not survived by anyone. As plaintiff alleges [decedent] was survived by two minor children, the Hospital contends plaintiff may not recover damages.
>
> The Hospital would be correct if [decedent] was an "adult" at the time of his death. *See* Fla. Stat. Ann. § 768.21(4). The Florida Wrongful Death Act, however, permits the parents of the decedent to recover – without restriction – damages for their pain and suffering if the decedent was a "minor child" at the time of death.

Id. at 1553.

In an effort to address the identified medical malpractice "crisis," the Florida Legislature, unlike some of its sister states which adopted statutory damage caps, chose to address the situation by restricting those parties who could recover damages for wrongful death attributable to medical malpractice. Such restrictions are analogous to and should be entitled to the same credence as a

statutory cap when read in conjunction with EMTALA's incorporation clause as to available damages.

II. The Decision Below Is Consistent With Congressional Intent And EMTALA § 1395dd(d)(2)(A).

In the Federal cases which have reviewed the relationship between state statutory recovery restrictions and EMTALA, the study of the legislative intent has been a critical component to the decisions. Given its reliance upon *Power*, 42 F.3d 851 (4th Cir. 1994) the lower court decision followed both Congressional intent and federal precedent under EMTALA, by holding that an EMTALA claim fell within the medical malpractice exception of the Florida Wrongful Death Statute.

> . . . [W]hen Congress drafted § 1395dd(d)(3)(A), it was clearly aware of a growing concern in some States that excessive damage awards were fueling a medical malpractice "crisis." *See, e.g.*, House Report #99-241 (Part 3), at 6, 1986 U.S.Code Cong. and Admin. News at 727. As a result, a number of such States had recently enacted ceilings on the amount of damages that could be recovered from medical personnel – ceilings that Congress apparently wished to preserve through the incorporation clause of § 1395dd(d)(3)(A).

Reid v. Indianapolis Osteopathic Medical Hospital, 709 F. Supp. 853, 855 (S.D. Ind. 1989) (§ 1395dd(d)(3)(A) is the identical predecessor to § 1395dd(d)(2)(A) which was redesignated in the 1990 Amendments). In the original report from the Committee on the Judiciary, Report 99-241, Part 3, Congress' intent is expressed as follows:

> [T]he Committee is concerned that if penalties are too severe, some hospitals, particularly those

> located in rural or poor areas, may decide to close their emergency rooms entirely rather than risk the civil fines, damage awards, and, as to physicians, criminal penalties that might ensue.

EMTALA § 1395dd(d)(2)(A), expressly adopts state-imposed limitations on damages. *See Lane* at 1552; *Brooks v. Maryland General Hospital, Inc.*, 996 F.2d 708, 715 (4th Cir. 1993), *Power* at 861; and *Lee v. Alleghany Regional Hospital Corporation*, 778 F. Supp. 900 (W.D. Va. 1991). Federal appeals courts have recognized, that by enacting the incorporation clause, Congress was explicitly directing Federal courts to look to state law in the state where the hospital is located to determine the type and amount of damages available in EMTALA actions. *Power* at 860. *See also Lee* at 900; *Reid* at 855; and *Owens v. Nacogdoches County Hospital District*, 741 F. Supp. 1269 (E.D. Tex. 1990). The *Power* Court recognized that the disadvantage in such an approach was that damages available in EMTALA would vary from state to state; however, the court reasoned this result is unavoidable because it is inherent in § 1395dd(d)(2)(A)'s explicit direction that courts look to state law to determine what damages are available. *Power* at 863. That directive was seen as "an attempt on the part of Congress to balance the deterrence and compensatory goals of EMTALA with deference to

the ability of the states to determine what damages are appropriate in personal injury actions against hospitals." *Id.*

III. There Is No Conflict Between EMTALA And Florida's Wrongful Death Act.

The recovery limit for mental pain and suffering of parents of an adult child with respect to claims for medical malpractice under Florida's Wrongful Death Act is consistent with the goals of EMTALA. Congress explicitly deferred to the particular states to determine what damages were appropriate under EMTALA. No evidence has been presented by the Petitioner of a direct conflict between the Federal and Florida Statutes. Petitioners' preemption analysis is inappropriate when, as with EMTALA, the Federal statute expressly incorporates state law. *Power* at 864. The Petitioner incorrectly implies that the Third District Court adopted and applied to EMTALA all of Florida's procedural and proof requirements. This misconstrues the lower Court's decision. The opinion evidences a clear understanding of the restrictions which apply under an EMTALA claim by applying the restrictions only in "the determination of the *damages* recoverable in an action under [EMTALA]." This counters Petitioners' representation that the Court adopted "all the vagaries of the Florida Medical Negligence Statute." (Petition at 14).

The Florida Supreme Court has recognized and preserved the statutory language defining a claim for medical malpractice in Florida Statute § 766.106(1)(a) as: "Claim for medical malpractice means a claim arising out

of the rendering of, or the failure to render, medical care or services." *J.B. v. Sacred Heart Hosp. of Pensacola*, 635 So. 2d 945, 949 (Fla. 1994).

As in Virginia, the Florida courts have chosen to give a broad construction to this definition:

> Even though Chapter 766 uses the terms "negligence" or "medical negligence" in several of its provisions, we do not believe that the legislature intended to limit coverage of the statutory scheme to only those actions framed in terms of negligence. It seems to us that the intent expressed in the text is to extend the statute whenever the medical judgment of the provider is being challenged.

Paulk v. National Medical Enterprises, Inc., 679 So. 2d 1289, 1292 n.3 (Fla. 4th DCA 1996). *See also, Tunner v. Foss*, 655 So.2d 1151, 1152 (Fla. 5th DCA 1995), rev. den., 663 So.2d 63 (Fla. 1995) (physician's alleged refusal to refer patient to a specialist based upon economic self-interest fell within the umbrella of the medical malpractice statute).

Without concern for negligence theories or otherwise necessary burdens of proof, the lower court recognized Florida's broad interpretation and definition of "medical malpractice" and found that Petitioners' EMTALA claim fell within those parameters.

FLORIDA'S WRONGFUL DEATH ACT, which imposes specific limitations on damages has been found constitutional and bears a rational relationship to the legitimate state interest of limiting increases in medical insurance costs. *Stewart v. I.B. Price, M.D.*, 704 So. 2d 594 (Fla. 1st DCA 1997). The constitutionality of the FLORIDA'S WRONGFUL DEATH ACT was recently upheld by the Florida Appellate

Court in the case of *Mizrahi v. North Miami Medical Center, Ltd.*, 23 Fla. L. Weekly D321 (Fla. 3rd DCA, Jan. 28, 1998).

Respondents submit to this Court that failure to apply the exclusion under Florida's Wrongful Death Act in an EMTALA action would result in the abandonment of state medical malpractice claims in favor of pursuing EMTALA claims in order to avoid the effect of the exclusion. This would clearly contravene Congress' intention that EMTALA not be used as a surrogate for traditional state claims of medical malpractice. *See Vickers v. Nash General Hospital, Inc.*, 78 F.3d 139, 141 (4th Cir. 1996).

CONCLUSION

The decision below has not defeated Petitioner's claim under EMTALA; it has merely limited the elements of damages recoverable. This is both consistent with Congressional intent and the plain language of EMTALA. Thus, in the decision below, the Court correctly applied the medical malpractice exception provided in § 768.21(8), Florida Statutes (1995).

For the reasons given above and based upon the citations of authority herein, it is respectfully submitted that this Court's discretionary jurisdiction should not be invoked and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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